IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Revision No.2458 of 2006

DATE OF DECISION: DECEMBER 1, 2006

Rakesh Mahindroo

...PETITIONER

VERSUS

Trilochan Singh

...RESPONDENT

CORAM: HON'BLE MR.JUSTICE SATISH KUMAR MITTAL

Present: Mr. Akshay Kumar Goel, Advocate,
for the petitioner.

...

The petitioner has filed this criminal revision against the judgment dated 27.11.2006 passed by the Additional Sessions Judge, Fast Track Court, Faridabad, whereby the appeal preferred by the petitioner against the judgment of conviction and order of sentence dated 20.1.2005/22.1.2005 passed by the trial Court, has been dismissed.

In this case, a complaint under Section 138 of the Negotiable Instruments Act was filed by the respondent against the petitioner on account of dishonour of a cheque of Rs.6.00 lacs issued by him. The trial Court finding the petitioner guilty for the alleged offence, convicted him under the said Section and sentenced him to undergo simple imprisonment for a period of nine months and he was also directed to make payment of Rs.8.00 lacs as compensation to the complainant within a period of three months. Aggrieved against the said judgment, the petitioner filed an appeal, which was also dismissed by the Additional Sessions Judge, Fast Track Court, Faridabad. Hence this criminal revision.

I have heard the counsel for the petitioner and gone through the judgments passed by both the Courts below.

Counsel for the petitioner made two-fold submission. Firstly, that in this case the complainant has failed to prove that the cheque in question was issued by the petitioner in discharge of any debt or other liability. In this regard, counsel submits that the complainant has not proved

the receipt dated 1.5.1998 vide which the petitioner was alleged to have taken a loan of Rs.4.00 lacs from the complainant.

I do not find any substance in the aforesaid contention of the counsel for the petitioner. Similar argument was raised before the Appellate Court, which has been dealt with in detail. It was found that the said receipt (Ex.P1) had been duly proved. The original receipt was produced in the court at the time of preliminary evidence and after seeing the original, the photo-copy of the receipt dated 1.5.1998 was exhibited as Ex.P1 and the original was returned to the complainant. Therefore, it was held that it cannot be said that receipt (Ex.P1) is not admissible. However, during the pendency of the appeal, an application under Section 311 Cr.P.C. was filed by the complainant to place on record the original receipt, but the Appellate Court taking into consideration the fact that the photo-copy of the receipt was rightly exhibited in the trial Court and at that time no objection was raised, therefore, it was felt that there was no necessity for additional evidence. Even otherwise the accused did not dispute his signatures on the cheque in question. His witness has also stated that the cheque bears the signature of the petitioner. In my opinion, the issuance of a cheque itself raises a presumption that the same was issued against some existing liability. It was for the accused to rebut the said presumption. For that, no evidence has been led.

Secondly, counsel for the petitioner submitted that in this case the complainant has failed to prove the service of notice on the petitioner.

I do not find any substance in the second contention of the counsel for the petitioner also. In the present case, the service of notice stood duly proved. The notice was sent to the petitioner by registered post with AD on the correct address of the petitioner, and the same was not received back by the complainant. It is not the case of the petitioner that on the registered AD post, the address of the petitioner is not correct. In these circumstances, when the notice was sent by registered AD on the correct address, then presumption under Section 114 Illustration (b) of the Indian Evidence Act will come into play and the notice is deemed to be duly served. The Appellate Court has discussed all these aspects in detail. I do not find any illegality or infirmity in the judgment of conviction and order

of sentence passed by the trial Court and affirmed by the Appellate Court.

Hence, criminal revision is dismissed.

December 1, 2006 (SATISH KUMAR MITTAL)
vkg JUDGE